

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Case No.: 2:14-cr-00332-JAD-VCF

Plaintiff

V.

Edward Jameson Purry, II,

Defendant

Order Denying Request for Release

[ECF Nos. 178, 186]

This court denied defendant Edward Jameson Purry, II's motion for a compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) because had not shown that he exhausted the statutorily mandated process for seeking such relief.¹ Purry has since demonstrated that he did exhaust that process and now moves for reconsideration.² Because I did not evaluate the merits of Purry's request when denying it for lack of exhaustion, I grant his request to do so, but I ultimately conclude that compassionate release is not warranted.

Background

Purry is roughly 63 months into serving a 102-month sentence after a jury found him guilty on four counts of making false statements in the acquisition of fourteen firearms.³ The evidence at trial and information in the presentence report (PSR) made it clear that these misrepresentations were just part of a larger operation to traffic guns. The Ninth Circuit affirmed his judgment of conviction.⁴

21 | ¹ ECF No. 177.

²² ECF No. 178. Purry so demonstrated in a supplement that crossed processing paths with the court's order. See ECF No. 176.

23||³ ECF No. 32 (indictment).

⁴ ECF No. 165 (memorandum disposition).

1 Now 34 years old, Purry is incarcerated at the Bureau of Prison's (BOP's) FCI Lompoc
 2 facility and is two years from his projected release date.⁵ His medical records indicate that he
 3 has asthma, hypertension, and hyperlipidemia, and that he has been prescribed medication for
 4 asthma and hypertension.⁶ He notes that these conditions put him at risk of being more seriously
 5 impacted by COVID-19 should he contract it. He stresses that FCI Lompoc has suffered a
 6 serious outbreak of the virus. It is widely known that this facility was severely impacted by the
 7 virus. Indeed, the BOP website currently reflects that 19 of the inmates at that facility and 8 staff
 8 members are testing positive for the virus and that 884 inmates have recovered from it.⁷

9 Purry argues that he should be granted compassionate release or otherwise transferred to
 10 home confinement with his family because his preexisting medical conditions make him more
 11 vulnerable to the virus. In numerous supplemental filings, he has informed the court that he has
 12 now contracted the virus,⁸ that he has received no treatment for it, and that a friend of his at
 13 Lompoc has now died from it.⁹ The government continues to oppose Purry's request in its
 14 responses to his filings. It argues that the BOP can—and continues to—adequately care for
 15 Purry at Lompoc¹⁰ and that his release would endanger the community.¹¹

16
 17
 18
 19

 20⁵ ECF No. 170 at 2.

21⁶ ECF No. 171.

22⁷ <https://www.bop.gov/coronavirus/> (last visited 5/28/2020).

23⁸ ECF No. 181.

⁹ ECF No. 184.

¹⁰ ECF No. 172 at 12–16; ECF No. 180 at 3; ECF No. 182.

¹¹ ECF No. 172 at 3–4, 20–21; ECF No. 180 at 3.

Discussion

A sentencing court's ability to modify or reduce a sentence once imposed is seriously limited.¹² The compassionate-release provision of 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018,¹³ is an exception to this limitation. It allows the sentencing judge to reduce a sentence based on “extraordinary and compelling reasons” after the defendant has failed to get the BOP to bring such a motion on his behalf.¹⁴ The court must consider the factors in 18 U.S.C. § 3553(a) “to the extent that they are applicable.”¹⁵ Any sentence reduction also must be “consistent with applicable policy statements issued by the Sentencing Commission,”¹⁶ including the requirement that the defendant “is not a danger to the safety of any other person or to the community.”¹⁷

The premise of Purry's request was that his release would help prevent him from contracting the virus. That need vanished when Purry tested positive for the virus.¹⁸ And fortunately, the notion that keeping Purry incarcerated during this pandemic would "render his remaining imprisonment term a death sentence" due to his preexisting medical issues¹⁹ has also proven false. Purry's medical records reflect that he has been entirely asymptomatic since contracting COVID-19.²⁰ And while I recognize that the measures that FCI Lompoc initially

¹⁸ ¹² See *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003) (exploring Federal Rules of Criminal Procedure 35 and 36); 18 U.S.C. § 3582(c).

¹⁹¶¹³ The First Step Act of 2018, § 603(b), Pub. L. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018).

¹⁴ 18 U.S.C. § 3582(c)(1)(A)(i).

20 | 15 Id.

21 | ¹⁶ Id.

¹⁷ U.S.S.G. § 1B1.13(2).

²² See records at ECF No. 187 at 32.

23 | ¹⁹ ECF No. 170 at 10.

²⁰ ECF No. 187 at 19–20.

1 implemented to control the spread of COVID-19 largely failed as the vast majority of inmates
 2 have tested positive for the virus, based on the evidence currently before me, it appears that FCI
 3 Lompoc is adequately monitoring and caring for Purry. The facility has established and
 4 implemented an extensive protocol in response to the outbreak, including the installation of a
 5 hospital care unit at the facility and universal testing.²¹ Plus, Purry's medical records reflect that,
 6 contrary to Purry's reports to his counsel, Purry was monitored by Lompoc medical staff, had his
 7 temperature and condition checked daily between May 9th and May 20th, and consistently
 8 denied any COVID-19 symptoms including cough, muscle pain, fatigue, sore throat, loss of taste
 9 or smell, or chills.²² In light of these developments, I cannot find Purry's situation to be an
 10 "extraordinary or compelling circumstance" that warrants his release.

11 Even if I could so find, I would deny Purry's motion based on the § 3553(a) factors.
 12 Purry had little criminal history—just one misdemeanor conviction for trying to buy a car using a
 13 counterfeit driver's license²³—but it occurred during the same time period as the offense conduct
 14 here, which was serious. As I explained at sentencing, although the offenses of conviction were
 15 "based on false addresses," there was also "a significant amount of very compelling related
 16 conduct".²⁴

17 This was not a single mistake. It wasn't even 14 mistakes that the
 18 jury convicted him of, but it turns out it was 90 or more mistakes,
 19 many of which have been recovered, some from crime scenes, and
 20 many still out there on the streets at this point. And even though I
 did not find that—I did not apply the trafficking enhancement
 because I didn't want to double count, I do recognize that Mr.
 Purry has demonstrated a few things. **He has demonstrated a**

21²¹ ECF Nos. 182-1 (Declaration of Suzanne Scott), 182-2 (BOP media statement re: testing),
 182-3 (media statement re: hospital care unit).

22²² *Id.*

23²³ PSR at 19, ¶ 144.

24²⁴ ECF No. 157 at 53 (transcript of sentencing hearing).

1 **complete lack of respect for the gun laws and the consequences**
 2 **of his actions. And it's clear to me he was trafficking guns, 90**
 3 **guns over the course of an entire year.** So this—as much as I
 understand the characterization of this as a mistake, it was a lot of
 mistakes and it was a series of mistake[s] and very serious ones.²⁵

4 Indeed, I found clear and convincing evidence that Purry knew that his sale of firearms to an
 5 acquaintance at a car wash whom he knew only as “Pablo” meant that they’d end up trafficked in
 6 Mexico.²⁶ And though Purry was originally granted pretrial release, that release was revoked
 7 because of his consistent lack of candor to Pretrial Services officers.²⁷

8 It appears from Purry’s supplemental submissions that he has been a model inmate during
 9 his incarceration and availed himself of numerous programs, which this court recognizes is
 10 praiseworthy and certainly provides some mitigation for his criminal history and non-compliance
 11 with conditions of supervision.²⁸ However, these developments don’t tip the § 3553(a) factor
 12 scale in a way that justifies shaving years off Purry’s 102-month sentence. His conduct was
 13 reckless and threatened public safety, making him a danger to the community.²⁹ The low-end
 14 guidelines sentence he received was and remains sufficient but not greater than necessary to
 15 reflect the seriousness of the offense, promote respect for the law, provide just punishment,
 16 afford adequate deterrence to criminal conduct, and protect the public from further crimes by this
 17 defendant.³⁰ And a release at this time would be roughly akin to a four-level downward

18
 19²⁵ *Id.* (emphasis added).

20²⁶ ECF No. 157 at 21–22 (transcript of sentencing).

21²⁷ ECF No. 151 at 14–15 (transcript of revocation proceedings).

22²⁸ *See, e.g.*, ECF Nos. 176-1, 176-2.

23²⁹ *See U.S.S.G. § 1B1.13(2)* (policy statement that § 3582 release requires that “the defendant is not a danger to the safety of any other person or to the community”).

³⁰ 18 U.S.C. § 3553(a)(2). At sentencing, the government asked for an upward departure to 151 months. *See* ECF No. 157 at 25.

1 variance, which would create an unwarranted sentence disparity among defendants guilty of
2 similar conduct.³¹ So I find that Purry is not entitled to a sentence reduction or release to home
3 confinement.

4 **Conclusion**

5 IT IS THEREFORE ORDERED that Defendant's Motion for Reconsideration of Order
6 Denying Supplement to Emergency Motion for Order Reducing Sentence or Modifying
7 Judgment under 18 U.S.C. § 3582(c)(1)(A)(i) and Authorizing Any Remaining Portion of His
8 Sentence to be Served on Home Confinement [ECF No. 178] is **GRANTED in part and**
9 **DENIED in part.** It is granted in that I have reconsidered my order in light of the
10 supplementation and consider the release request on its merits; when I do evaluate the merits of
11 the motion and the many supplements to it, I continue to deny the request for relief.

12 IT IS FURTHER ORDERED that the Government's Motion to Seal defendant's medical
13 records [ECF No. 186] is **GRANTED.** The Clerk of Court is directed to maintain the seal on
14 ECF No. 187.

15 Dated: May 28, 2020

16 _____
17 U.S. District Judge Jennifer A. Dorsey
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____

³¹ 18 U.S.C. § 3553(a)(6).